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January 27, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: **MM Docket No. 92-266**

Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation

Dear Ms. Searcy:

Transmitted herewith on behalf of the State of Connecticut is an original and nine copies of Comments in the above-referenced proceeding.

Should any questions arise respecting this matter, please communicate with the undersigned.

Sincerely,

Richard Blumenthal
Attorney General
State of Connecticut

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

IN THE MATTER OF	:	
	:	
IMPLEMENTATION OF SECTIONS OF THE CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992: RATE REGULATION	:	MM DOCKET NO. 92-266

COMMENTS OF THE ATTORNEY GENERAL, STATE OF CONNECTICUT

Richard Blumenthal, Attorney General of the State of Connecticut, herewith submits Comments in response to the Notice of Proposed Rule Making, FCC 92-544, (released December 24, 1992) ("NPRM"), in regard to the above captioned matter.

I. INTRODUCTION

1. Under the Cable Communications Policy Act of 1984, as interpreted by the Commission, the rates charged by cable operators for basic service were deregulated. Unrestrained by regulation or competition in the provision of its services, rates for cable programming skyrocketed. Since December 29, 1986, the per channel costs of basic cable service in Connecticut increased

by an average of 54.1 percent. The Consumer Price Index, on the other hand, increased only 24 percent during that same period.

2. The public outrage over the monopoly rates charged by the cable industry prompted Congress to enact the Cable Television Consumer Protection and Competition Act of 1992. That Act, as its name states, is intended to protect consumers from cable's monopoly power by reinstituting cable rate regulation. The rules which this Commission will adopt concerning rate regulation will determine whether the mandate of the American public and the directives of Congress are fulfilled or frustrated. A half-hearted attempt at regulation, or deregulation posing in the guise of meaningless regulatory oversight, will frustrate the goals of the law and will leave cable consumers no better off than they are today.

II. FEDERAL AND STATE REGULATORY EFFORTS MUST BE DIRECTED TO ACHIEVE REASONABLE RATES FOR ALL CABLE PROGRAMMING SERVICES.

3. The mandate of the Cable Television Consumer Protection Act is to provide reasonable rates for all cable services,

whether those services appear as part of the State regulated "basic service" tier or as federally regulated "cable programming services." The cable industry should not be provided with the opportunity to thwart that mandate by shuffling cable services between jurisdictions in an effort to maximize their profits.

4. The Cable Act defines "basic service tier" as, at a minimum,

> "(1) all local commercial and noncommercial educational television and qualified low-power station signals carried to meet carriage obligations imposed by Sections 614 and 615 of the Cable Act; (2) any public, education, and governmental access programming required by the franchise to e provided to subscribers; and (3) any signal of any television broadcast station that the cable operator offers to any subscriber, unless it is a signal that is secondarily transmitted by a satellite carrier beyond the local service area of such station."

47 U.S.C. §543(b)(7)(A).

Because of this limited definition of "basic service," to avoid state rate regulation cable systems will simply move programming out of basic and into new or expanded tiers of service.

5. Cable companies in Connecticut have already begun stripping programming from the basic service packages that will

be subject to State regulation. Their goal, of course, is to avoid the close rate supervision of basic service expected by the State in favor of an apparent expectation of lax regulatory effort by this Commission. The closer this Commission's regulation over the rates for cable programming services approximates no regulation, the fewer the "basic service" programming choices that will be available to the public. Should this Commission adopt an essentially deregulatory policy toward cable programming services, state rate regulation will become a meaningless exercise and the cable consumer will once again be subject to cable's monopoly pricing policies.

6. This commission in the Notice of Proposed rulemaking has set forth several tentative conclusions that could lead to a frustration of the Act. The NPRM appears to be overly concerned with crafting rules "that will reduce the burden on cable operators..." and which will "simplify regulation." NPRM p. 22, 24. However, had Congress been as concerned with the burden of regulation on Cable operators as the NPRM implies, it would not

have enacted the Cable Television Consumer Protection Act in the first instance. The simplest regulation is no regulation at all.

7. The State of Connecticut does not believe that excessive regulation is a desirable goal. However, the system of benchmarks, price caps and incentive regulation alluded to in the PPM appears to be heavily weighted toward minimizing regulation and maintaining the level of cable profits enjoyed under deregulation rather than being directed at providing consumers with the reasonable cable rates mandated by Congress.

A. States should be provided with the option of using regulatory benchmarks or cost of service rate regulation.

8. The NPRM states that the Commission has concluded that the "primary mode of regulation for basic service tier rates" should be "benchmarking." According to the NPRM, cost-of-service ratemaking should be employed only "to justify the reasonableness of rates" by cable operators that charge above the "benchmarking standard." The State of Connecticut believes that this tentative conclusion is erroneous.

9. Basic service ratemaking should be the province of the states and local franchising authorities. While a federal system of benchmarking will provide for administrative convenience, it should be an option available to local authorities and not a Commission imposed mandate. A national benchmark could result in little more than a national price for basic cable service. Additionally, those systems with rates below the benchmark will be entitled to an immediate rate increase - a result of cable rate regulation which Congress definitely did not intend.

10. While Connecticut does not quarrel with the concept of this Commission providing guidelines for rate regulation, Connecticut has always believed that such regulation is better left with the franchising authorities. A local review of rates and services would provide a better substitute for competition that would national "benchmarks." By the time cable operators, this Commission and franchising authorities work out all the intricacies of the "benchmarks" and other components, even the most detailed cost-of-service rate proceeding could have been long completed.

11. Cost-of-service regulation, while more burdensome to the cable industry and to franchising authorities, will provide a truer picture of the reasonableness of cable rates and will better protect the cable consumer. At the same time, as in the utility industry, cable operators will be allowed to earn a reasonable profit level. Cost-of-service rate regulation, a concept well known to the States, is an option which should not be eliminated at the federal level. This Commission should leave the choice of basic service regulation to the States.

12. This Commission, therefore, should provide the States and local franchise authorities with a choice of utilizing either Commission approved benchmark regulation or traditional cost-of-service ratemaking. With such alternative systems in use, this Commission can study the results on cable rates and cable programming achieved by the differing regulatory frameworks and employ that information in making future regulatory decisions.

B. Any federal benchmark system of regulation should begin with a benchmark based on 1986 rates.

13. While cost based rate regulation should be an option available to local franchise authorities, an alternative system of federal benchmarks is also appropriate. However, considering the short period of time available for the development of a federal regulatory system, this Commission should not attempt to hurriedly develop and cement into place long-term policies or procedures for rate regulation. Instead, this Commission should develop an interim procedure to meet the immediate goal of the Cable Act to provide cable service at reasonable rates. With interim procedures in place, this Commission can proceed to collect the data and information necessary for the development of a well-reasoned federal policy which will protect consumers from a reoccurrence of the monopoly pricing practiced by the industry during the period of rate deregulation. Such long-term procedures could include the development of a cost-based benchmark or a benchmark that reflects the rates which cable companies would charge if faced with effective competition.

14. This office is of the opinion that a federal benchmark based upon the per channel rates for basic service charged in 1986 prior to rate deregulation will best serve to implement Congressional policy. This benchmark would include a CPI adjustment factor. Cable companies desiring to charge rates higher than the federal benchmark would bear the burden of proving the justification for such higher charges. Such a benchmark would eliminate the excessive and unjustified rate increases charged by some cable operators during the period 1986 to 1992. This benchmark would also protect those systems which could demonstrate a cost justification for any past increases which exceeded the CPI. A benchmark based upon the level of past regulated rates would also allow a tailoring of cable rates to individual systems throughout the country. Individual system rates would track their own rates prior to a rate deregulation and, at the same time, allow for differences in justifiable cost increases during that period. Finally, this benchmark will reward those cable systems whose efficiency has kept costs below the level of the CPI.

C. Federal regulation of cable programming services should complement and protect local regulation of basic cable service.

15. As stated previously, cable operators have been moving programming services from their present basic service tier to the tier which will be regulated by this Commission under its authority to regulate rates for cable programming services. Unless this Commission establishes a regulatory framework which effectively regulates the rates for these services, State rate regulation will be meaningless and consumers will remain unprotected from the past monopoly pricing practices for cable services.

16. This Commission, therefore, must establish a regulatory framework which both complements and protects state regulation of basic service. To accomplish this result, cable programming services should be regulated in the same manner as basic service and this Commission should establish federal per channel benchmarks based upon the 1986 rates charged prior to rate deregulation. Many of the soon-to-be "cable programming services" were part of basic service prior to rate deregulation

and the 1986 per channel prices are readily identifiable. Justifiable cost increases which exceed the changes in the CPI since 1986 are easily ascertainable and, if proven, can be incorporated into the federal benchmark.

17. A benchmark based upon 1986 cable rates will complement and protect state regulation of the basic service tier and will insure that cable consumers will not continue to pay excessive prices for cable service. Since both basic and non-basic service will be priced on the same criteria, the cable industry will lose the incentive to move programming out of basic service in an effort to shop for a more "favorable" federal forum.

D. Rates for equipment should be cost based.

18. Congress intended to separate rates for equipment (e.g., converter boxes and remote control devices) and for installations from other basic tier rates. Not only should rates for equipment and installation not be bundled together, but charges for each individual item and activity should be

unbundled. This will encourage competitive markets and thus lower prices for subscribers.

19. Equipment required for all tiers and all premium services should be provided at actual cost. Congress did indeed intend low rates for equipment and installation (see Section 623(b)(3).

E. Customer service changes should be easy and inexpensive.

20. Congress emphasized that customers can only be charged a nominal amount for changing equipment or service tiers, whether "effected solely by a coded entry on a computer terminal" or not. Changes must be easy and inexpensive. Congress did not intend cable operators to profit on changes in service tiers. The evasive retiering which is now occurring must not be allowed to create expenses for consumers.

F. Adequate notice to the public and the franchise authority of proposed rate increases is essential.

21. Section 623(b)(6) of the Cable Act requires "a cable operator to provide 30 days' advance notice to a franchising

authority of any increase proposed to be charged for the basic service tier." Section 623 must be interpreted to require a cable operator to give 30 days' notice of its intent to file for a rate increase. Subscribers must be given notice at the same time. Once the cable system makes its actual filing, the pleading cycle can begin. A 120 day period after the rate filing appears to be a reasonable time for decision making. Formal hearings should be an option available to local franchise authorities and appeals from those decisions should be brought to local courts.

22. Automatic rate increases should not be allowed. Automatic pass-through provisions would remove any incentives for efficiency and the resultant cost savings which such efficient operations could provide.

23. We agree with the Commission that "enforcement of cable regulation should occur at the local level." A franchising authority should have the authority to reject a proposed increase and set rates that are reasonable. To require cable companies to continually refile rate requests until rate approval is achieved

would be unduly burdensome and time consuming both for the cable operator and the franchise authority.

G. Complaint procedures should be open and flexible.

24. Under the Act, subscribers can only protest against unreasonable expanded tier rates or changes in tier composition by complaining to the Commission. The mechanisms for subscriber complaints should be as open and flexible as possible: direct complaints in any form, complaints forwarded through franchise authorities; any method that gives consumers an opportunity to protest. If the initial information supplied by the subscriber is insufficient for Commission action, the Commission should return to the subscriber a simple form to fill out, eliciting the local rate or service information which the Commission needs.

25. No "concurrence" of the local franchise authority should be required prior to this Commission's review of a consumer complaint. In addition, a 30 day complaint period is wholly insufficient for consumers. At a minimum, subscribers should have 90 days from the date of notification of a rate change to file a complaint with this Commission.

Respectfully submitted,

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